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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA- WESTERN DIVISION

CARMEN JOHN PERRI, an  
individual,

Plaintiff,

v.

RAINBOW ACRES, INC., a  
California corporation, dba Rainbow  
Acres, aka Kitchen Fresh; MAURY  
HERMAN, individually and as  
Trustee of the Maury Herman Family  
Trust #1 dated September 17, 1985,  
as amended, and DOES 1-10,  
inclusive,

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For:**

- 1. VIOLATIONS OF THE  
AMERICANS WITH DISABILITIES  
ACT OF 1990, 42 U.S.C. §12181 *et*  
*seq.***
- 2. VIOLATIONS OF THE UNRUH  
CIVIL RIGHTS ACT, CALIFORNIA  
CIVIL CODE § 51 *et seq.***

Plaintiff, CARMEN JOHN PERRI (“Plaintiff”), complains of Defendants  
RAINBOW ACRES, INC., a California corporation, dba Rainbow Acres, aka

1 Kitchen Fresh; MAURY HERMAN, individually and as Trustee of the Maury  
2 Herman Family Trust #1 dated September 17, 1985, as amended, and Does 1-10  
3 (“Defendants”) and alleges as follows:

4 **PARTIES:**

5 1. Plaintiff is an adult California resident with physical disabilities.  
6 Plaintiff qualifies as an individual with disabilities under the Americans with  
7 Disabilities Act. Plaintiff is substantially limited in performing one or more major  
8 life activities, including but not limited to: walking, standing ambulating, sitting and  
9 grasping objects. As a result of his impairments, he is subject to falls, is unsteady  
10 on his feet, cannot walk for any significant distance without having to periodically  
11 rest and often uses a wheelchair and walker for mobility.  
12

13 2. Plaintiff is informed and believes and thereon alleges that Defendants  
14 MAURY HERMAN, individually and as Trustee of the Maury Herman Family Trust  
15 #1 dated September 17, 1985, as amended, owned the property located at 13208 W.  
16 Washington Blvd., Los Angeles, California 90066 (“Property”) in July of 2017.  
17

18 3. Plaintiff is informed and believes and thereon alleges that Defendants  
19 MAURY HERMAN, individually and as Trustee of the Maury Herman Family Trust  
20 #1 dated September 17, 1985, as amended, own the Property currently.

21 4. Plaintiff is informed and believes and thereon alleges that Defendant  
22 RAINBOW ACRES, INC., a California corporation, operated and controlled  
23 Rainbow Acres, aka Kitchen Fresh (“Business”) located at the Property in July of  
24 2017.

25 5. Defendant RAINBOW ACRES, INC., a California corporation,  
26 operates and controls the Business located at the Property currently.

27 6. Plaintiff does not know the true names of Defendants, their business  
28 capacities, their ownership connection to the subject property and business, or their  
relative responsibilities in causing the access violations herein complained of, and

1 alleges a joint venture and common enterprise by all such Defendants. Plaintiff is  
2 informed and believes that each of the Defendants herein, including Does 1 through  
3 10, inclusive, is responsible in some capacity for the events herein alleged, or is a  
4 necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend  
5 when the true names, capacities, connections, and responsibilities of the Defendants  
6 and Does 1 through 10, inclusive, are ascertained.

### 7 **JURISDICTION AND VENUE**

8 7. This Court has subject matter jurisdiction over this action pursuant  
9 to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans  
10 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. ("ADA").

11 8. This court has supplemental jurisdiction over Plaintiff's non-federal  
12 claims pursuant to 28 U.S.C. § 1367, because Plaintiff's Unruh Civil Rights Act  
13 ("UCRA") claims are so related to Plaintiff's federal ADA claims in that they have  
14 the same nucleus of operative facts and arising out of the same transactions, they  
15 form part of the same case or controversy under Article III of the United States  
16 Constitution.

17 9. Venue is proper in this court pursuant to 28 U.S.C. §1391 because the  
18 real property which is the subject of this action is located in this district and because  
19 Plaintiff's causes of action arose in this district.

### 20 **FACTUAL ALLEGATIONS**

21 10. Plaintiff went to the Business on or about July 16, 2017, to purchase  
22 snack food.

23 11. The Business is a facility open to the public, a place of public  
24 accommodation, and a business establishment.

25 12. Parking spaces are one of the facilities, privileges and advantages  
26 reserved by defendants to persons at the property serving the Business.

27 13. Unfortunately, although access paths were one of the facilities reserved  
28 for patrons, there were access paths available for persons with disabilities that

1 complied with the Americans with Disability Act Accessibility Guidelines  
2 (“ADAAG”) in July of 2017.

3 14. Instead of having a compliant access path on the property, Defendants  
4 have: an access path in excess of ADAAG specifications which did not have the  
5 required handrails; an access path that has a cross slope above ADAAG  
6 specifications; multiple barriers of tables and patrons which narrowed the accessible  
7 pathway to less than ADAAG specifications. In addition, there was no required  
8 signage for disabled parking.

9 15. Therefore, currently, there is no compliant accessible access pathway to  
10 the accessible entryway in the sidewalks serving the Business designed for persons  
11 with disabilities.

12 16. Subject to the reservation of rights to assert further violations of law  
13 after a site inspection found *infra* at paragraph 24, Plaintiff asserts there are  
14 additional ADA violations which affect him personally.

15 17. Plaintiff is informed and believes and thereon alleges Defendants had  
16 no policy or plan in place to make sure that there was a compliant accessible access  
17 pathway reserved for persons with disabilities prior to July of 2017.

18 18. Plaintiff is informed and believes and thereon alleges Defendants have  
19 no policy or plan in place to make sure that the accessible pathways for persons with  
20 disabilities.

21 19. The accessible pathway for use by persons with disabilities are a tip  
22 over, crash, fall hazard or trip hazard because it contains a curb ramp and cross  
23 slopes.

24 20. Plaintiff personally encountered these barriers because he was in a  
25 wheelchair. These inaccessible conditions denied the Plaintiff full and equal access  
26 and caused him difficulty, humiliation and frustration because it represented a tip-  
27 over hazard, and/or crash and fall hazard.

28 21. Plaintiff is being deterred from patronizing the Business and its

1 accommodations on particular occasions, but intends to return to the Business for the  
2 dual purpose of availing himself of the goods and services offered to the public and  
3 to ensure that the Business ceases evading their responsibilities under federal and  
4 state law.

5 22. The defendants have failed to maintain in working and useable  
6 conditions those features required to provide ready access to persons with  
7 disabilities.

8 23. The violations identified above are easily removed without much  
9 difficulty or expense. They are the types of barriers identified by the Department of  
10 Justice as presumably readily achievable to remove and, in fact, these barriers are  
11 readily achievable to remove. Moreover, there are numerous alternative  
12 accommodations that could be made to provide a greater level of access if complete  
13 removal were not achievable.

14 24. Given the obvious and blatant violation alleged hereinabove, Plaintiff  
15 alleges, on information and belief, that there are other violations and barriers in the  
16 site that relate to his disability. Plaintiff will amend the complaint, to provide proper  
17 notice regarding the scope of this lawsuit, once he conducts a site inspection.  
18 However, please be on notice that the Plaintiff seeks to have all barriers related to  
19 his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9<sup>th</sup> Cir. 2008) (holding  
20 that once a plaintiff encounters one barrier at a site, the plaintiff can sue to have all  
21 barriers that relate to his disability removed regardless of whether he personally  
22 encountered them).

23 25. Given the obvious and blatant violation alleged hereinabove, Plaintiff  
24 alleges, on information and belief, that the failure to remove these barriers was  
25 intentional because: (1) these particular barriers are intuitive and obvious; (2) the  
26 defendants exercised control and dominion over the conditions at this location prior  
27 to July 11, 2017, (3) the lack of accessible facilities was not an accident because had  
28 the defendants intended any other configuration, they had the means and ability to

1 make the change.

2 **FIRST CAUSE OF ACTION**

3 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990,**

4 **42 U.S.C. § 12181 et seq.**

5 26. Plaintiff re-alleges and incorporates by reference all paragraphs alleged  
6 above and each and every other paragraph in this Complaint necessary or helpful to  
7 state this cause of action as though fully set forth herein.

8 27. Under the ADA, it is an act of discrimination to fail to ensure that the  
9 privileges, advantages, accommodations, facilities, goods, and services of any place  
10 of public accommodation are offered on a full and equal basis by anyone who owns,  
11 leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a).

12 Discrimination is defined, inter alia, as follows:

- 13 a. A failure to make reasonable modifications in policies, practices,  
14 or procedures, when such modifications are necessary to afford  
15 goods, services, facilities, privileges, advantages, or  
16 accommodations to individuals with disabilities, unless the  
17 accommodation would work a fundamental alteration of those  
18 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 19 b. A failure to remove architectural barriers where such removal is  
20 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
21 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,  
22 Appendix "D".
- 23 c. A failure to make alterations in such a manner that, to the  
24 maximum extent feasible, the altered portions of the facility are  
25 readily accessible to and usable by individuals with disabilities,  
26 including individuals who use wheelchairs, or to ensure that, to  
27 the maximum extent feasible, the path of travel to the altered area  
28 and the bathrooms, telephones, and drinking fountains serving

1 the area, are readily accessible to and usable by individuals with  
2 disabilities. 42 U.S.C. § 12183(a)(2).

3 28. Any business that provides parking spaces must provide accessible  
4 parking spaces. 1991 Standards § 4.1.2(5). 2010 Standards § 208. Under the 1991  
5 Standards, parking spaces and access aisles must be level with surface slopes not  
6 exceeding 1:50 (2.0%) in all directions. 1991 Standards § 4.6.2. Under the 2010  
7 Standards, access aisles shall be at the same level as the parking spaces they serve.  
8 Changes in level are not permitted. 2010 Standards § 502.4. "Access aisles are  
9 required to be nearly level in all directions to provide a surface for wheelchair  
10 transfer to and from vehicles." 2010 Standards § 502.4 Advisory. Here the failure to  
11 provide a level access aisle in the designated disabled parking space is a violation of  
12 the law and excess slope angle in the access pathway is a violation of the law.

13 29. A public accommodation must maintain in operable working condition  
14 those features of its facilities and equipment that are required to be readily accessible  
15 to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

16 30. Here, the failure to ensure that accessible facilities were available and  
17 ready to be used by Plaintiff is a violation of law.

18 31. Given its location and options, Plaintiff will continue to desire to  
19 patronize the Business but he has been and will continue to be discriminated against  
20 due to lack of accessible facilities and, therefore, seeks injunctive relief to remove  
21 the barriers.

## 22 **SECOND CAUSE OF ACTION**

### 23 **VIOLATION OF THE UCRA, CALIFORNIA CIVIL CODE § 51 *et seq.***

24 32. Plaintiff re-alleges and incorporates by reference all paragraphs alleged  
25 above and each and every other paragraph in this Complaint necessary or helpful to  
26 state this cause of action as though fully set forth herein.

27 33. California Civil Code § 51 *et seq.* guarantees equal access for people  
28 with disabilities to the accommodations, advantages, facilities, privileges, and



1 services of all business establishments of any kind whatsoever. Defendants are  
2 systematically violating the UCRA, Civil Code § 51 *et seq.*

3 34. Because Defendants violate Plaintiff's rights under the ADA, they also  
4 violated the UCRA and are liable for damages. (Civ. Code § 51(f),52(a).) These  
5 violations are ongoing.

6 35. Plaintiff is informed and believes and thereon alleges that Defendants'  
7 actions constitute intentional discrimination against Plaintiff on the basis of a  
8 disability, in violation of the UCRA, Civil Code § 51 *et seq.*, because Defendants  
9 have been previously put on actual notice that its premises is inaccessible to  
10 Plaintiff. Despite this knowledge, Defendants maintain their premises in an  
11 inaccessible form, and Defendants have failed to take actions to correct these  
12 barriers.

13 36. Because the violation of the UCRA resulted in difficult, discomfort or  
14 embarrassment for the plaintiff, Defendants are also responsible for statutory  
15 damages, i.e. a civil penalty. (Civ. Code § 55.56(a)-(c).)

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## 20 **PRAYER**

21 **WHEREFORE, Plaintiff prays that this court award damages provide relief as**  
22 **follows:**

23 1. A preliminary and permanent injunction enjoining Defendants from  
24 further violations of the ADA, 42 U.S.C. § 12181 *et seq.*, and UCRA, Civil Code §  
25 51 *et seq.* with respect to its operation of the Business and Property; **Note: Plaintiff**  
26 **is not invoking section 55 of the California Civil Code and is not seeking**  
27 **injunctive relief under the Disable Persons Act at all.**

28 2. An award of actual damages and statutory damages of not less than



1 \$4,000 per violation pursuant to § 52(a) of the California Civil Code;

2 3. An additional award of \$4,000.00 as deterrence damages for each  
3 violation pursuant to *Johnson v. Guedoir*, 218 F. Supp. 3d 1096; 2016 U.S. Dist.  
4 LEXIS 150740 (USDC Cal, E.D. 2016);

5 4. For reasonable attorneys' fees, litigation expenses, and costs of suit,  
6 pursuant to 42 U.S.C. § 12205; California Civil Code § 52;

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby respectfully requests a trial by jury on all appropriate issues  
9 raised in this Complaint.

10  
11 Dated: July 26, 2017

**MANNING LAW, APC**

12  
13 By: /s/ Joseph R. Manning Jr., Esq.

14 Joseph R. Manning Jr., Esq.

15 Michael J. Manning, Esq.

16 Craig G. Côté, Esq.

17 Attorneys for Plaintiff  
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